

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42151

CF INDUSTRIES SALES, LLC

v.

CANADIAN NATIONAL RAILWAY COMPANY

Decided: February 6, 2017

On January 4, 2017, CF Industries Sales, LLC (CF) filed a complaint under 49 U.S.C. §§ 10702, 10704, and 11701, seeking injunctive relief and a determination from the Board that certain common carrier tariffs and rules issued by Canadian National Railway Company (CN) are unreasonable practices. CN filed its answer on January 24, 2017.

On January 30, 2017, CF and CN filed a joint motion requesting Board-sponsored mediation. The parties state that, after initial discussions, they have agreed to request mediation in an effort to resolve the issues that are the subject of the complaint. CF and CN request that the Board appoint a staff member or members as the mediator(s). CF states that it does not believe the proceeding should be held in abeyance at this time pending the conclusion of mediation, and it would not voluntarily consent to mediation if the proceeding could be held in abeyance over CF's objections. However, CF adds, it is agreeable to revisiting this matter at a later time, if and as warranted.

Pursuant to 49 C.F.R. § 1109.2(b), the Board shall grant any mediation request submitted by all parties to a matter, unless the parties seek to mediate disputes not eligible for Board-sponsored mediation. In this case, all parties have requested mediation, and the dispute raised by CF's complaint is not among the categories ineligible for mediation.<sup>1</sup> See 49 C.F.R. § 1109.1. Accordingly, the joint request for Board-sponsored mediation will be granted.

When all parties consent to mediation, it is within the Board's discretion to hold a proceeding in abeyance while mediation procedures are pursued. 49 C.F.R. § 1109.3(e). Here, CF's consent to mediation is conditioned on the proceeding not being held in abeyance. The Board commends the parties for their shared willingness to seek common ground on the dispute at issue. Accordingly, the Board will not hold the proceeding in abeyance at this time.

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<sup>1</sup> These include requests to obtain the grant, denial, stay or revocation of a request for construction, abandonment, purchase, trackage rights, merger, pooling authority or exemption related to such matters.

Within 10 days of the service date of this decision, the Acting Chairman will appoint one or more Board employees to serve as mediator(s). Once appointed, the mediator or mediators will contact the parties to discuss ground rules and the time and location of any meetings. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The parties may request to extend mediation by mutual written requests of all parties to the mediation proceeding. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

It is ordered:

1. The joint motion requesting Board-sponsored mediation is granted.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.